



## Business Leaders Dub Potential Ukraine Election “Disaster Waiting to Happen”

An appeal by prominent members of Ukraine's business community, to avoid a pre-term parliamentary election, appears to have gone unheeded as President Viktor Yushchenko declared his intention to hold consultations on the possible dissolution of parliament on 7 October. On Saturday, his press office confirmed he will give lawmakers until next Tuesday to agree a new coalition and thereafter may dissolve parliament and call the third parliamentary election in as many years.



▲ Independent voices speak out. A group of Ukrainian businessmen and women expressed concern over the effects that a dissolution of parliament and early elections would have on Ukraine's economy. They called for Ukraine's democratic forces to unite for the sake of the country.

Only last Friday, prominent figures from Ukraine's business community voiced their concern over the adverse impact another election could have on Ukraine's creaking economy. The group called for Ukraine's democratic forces to unite for the sake of the country and dubbed a potential election “a disaster waiting to happen.”

Dmytro Tarabakin, Managing Director of Dragon Capital said, “Our economy is challenged by a tough macro-economic environment and worsening global market conditions. Now is the time for Ukraine's politicians to put aside their personal differences and forge a stable, reliable government that is committed to sound economic policies.”

The briefing drew attention to the recent downgrade by Fitch Ratings of Ukraine's Long-Term IDR rating, citing “deteriorating fundamentals” and describing “political volatility” as a factor (see Inform Issue 87). Attention was also drawn to recent statements by foreign emerging market analysts concerned over the continuing political uncertainty and the repercussions of an election on policy making.

### Challenging Times

Ukraine's stock market has taken a battering this year, shedding 70 percent of its value. According to the business leaders, the economy is already facing tough challenges which would be exacerbated by another election. Falling commodity prices, such as steel, and rising energy prices have put pressure on industry. And whilst economic growth is still respectable, it has nevertheless slowed, while the country's current account deficit has grown.

“The prospect of a parliamentary election would be a disaster waiting to happen. It would serve only to enhance political and economic uncertainty, paralyse the institutions of



government and fuel negative sentiment,” said Vasyl Myroshnychenko, Partner, CFC Consulting.

This view seems to be shared by the Royal Bank of Scotland, which issued a note on 26 September, stating: “Obviously early elections are the worst case scenario, as given the challenges, Ukraine needs a strong government to take difficult decisions.”

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The press-conference panel included Dmytro Tarabakin, MD, Dragon Capital; Oleg Ustenko, Deputy Executive Director, the

Bleyzer Foundation; Vasyl Myroshnychenko, Partner, CFC Consulting, Director of the Ukrainian British City Club; and Nadiya Kravets, President Emeritus of the Oxford Ukrainian Society.

### Most Citizens Against Elections

Business leaders are not alone in not wanting pre-term elections. Some 72 percent of Ukrainian citizens are opposed. In his blog in the Kyiv Post, Taras Kuzio, a leading political expert and editor of Ukraine Analyst, wrote: “Another pre-term election would be bad for Ukraine’s economy, bad for Ukraine’s entry into NATO (an election would be held at the same time as the December NATO review meeting), even worse for Yushchenko’s popularity and could be disastrous for his Our Ukraine-People’s Self-Defense bloc (which might not make it into parliament).”



▲ Dr Taras Kuzio, Adjunct Professor at the Institute of European, Russian and Eurasian Studies at Carleton University (Ottawa), posed the question why does the president want to push the nation off a cliff?

### Leading Voices Speak Out

Also last week, a group of luminaries calling themselves “In the name of Ukraine” held a press briefing and addressed a message to the president and prime minister.

They urged the democratic forces to unite, saying that it was in the best interests of the country.

Top figures included: Stephan Bolotenyuk, the Chairman of the public initiative and President of the Academy of Original Ideas; Nadiya Chernoukha, Head of the Lugansk Women’s Organisation DIYA; Professor Stephan Pavliuk, Congress of Ukrainian Intelligentsia; Dr Olena Pavlova, Professor of Law and the President and founder of the International Standard Franchise Company; Vasyl Tymkovych, the Head of Youth Agrarian Trade Union.

Professor Pavliuk was reported as saying, “What we need is a stable, predictable yet progressive democratic government. It saddens me to see how the reform agenda started by the Tymoshenko government was stopped in its tracks.”

A red banner with a white and red abstract graphic on the left. The text on the right reads: "For the latest English-language news from BYuT visit [www.ibyut.com](http://www.ibyut.com)" and "Bloc of Yulia Tymoshenko" in large white letters at the bottom.

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**Bloc of Yulia Tymoshenko**

# Gas Talks Get Off to Flying Start

Prime Minister Yulia Tymoshenko went to Moscow last week to progress the finalisation of a gas deal. However, her meeting with Russian Federation Prime Minister Vladimir Putin was nearly cancelled, when the premier and her advisers arrived at Kyiv's Boryspil airport to find their aircraft unexpectedly commandeered by President Viktor Yushchenko.



▲ Gas deal nearing completion. Prime Minister Yulia Tymoshenko and Russian Prime Minister Vladimir Putin agree an inter-governmental memorandum on gas supply and transit.

According to the president's office, an Ilushin-62 aircraft to be used by the president to fly to Lviv in Western Ukraine, developed a technical problem so a reserve aircraft was commandeered. The plane selected just happened to be the aircraft earmarked for Ms Tymoshenko who, at the time, was heading off for crucial gas talks in Moscow.

In the end, the government delegation was forced to split up and, in haste, a charter plane was hired to get the prime minister to her meeting.

The meeting with her Russian counterpart took place at the Novo-Ogaryovo country mansion where the leaders agreed an inter-governmental memorandum.

Interfax reported the Russian premier as saying, "After a very substantial talk, we managed to coordinate an inter-governmental memorandum on cooperation in gas issues, which could later serve as a basis for a future gas treaty between Gazprom and Naftohaz Ukraine."

The wide ranging discussions included the settlement of a \$1.8 billion debt by Ukraine, gas transit issues, and the establishment of direct contractual relationships between Gazprom and Naftohaz – the Russian and Ukrainian state gas companies. Completion of the deal and the announcement of a gas price for 2009 are expected to take another month.

Ukraine currently pays \$179.50 per thousand cubic metres for imported natural gas from Russia and Central Asia. Ms Tymoshenko has long campaigned for transparent dealings on natural gas imports to Ukraine, with the removal of intermediaries and a direct relationship between the two national gas companies.

## Gas Supplies to Europe Reach Record High

Prior to the talks, Gazprom's CEO Alexei Miller announced that the price of gas to Europe had reached a record high of more than \$500 per thousand cubic metres. In the past Gazprom has suggested Ukraine might have to pay \$400 per thousand cubic metres. The Minister of Fuel and Energy, Yuriy Prodan, said that such a cost would hurt Ukraine's energy hungry heavy industry and subsidised consumer market. Ms Tymoshenko commented that such a price would cause a "deep shock to Ukraine's economy."

The premier, supported by the CEO of Naftohaz, Oleh Dubnya, recognised the need to pay market prices but called for a phased increase over a number of years. "There is no doubt that there will be a price increase, because we are gradually, year after year, moving towards a market price," said Ms Tymoshenko.

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## Olive Branch Offered to Our Ukraine



Prime Minister Yulia Tymoshenko has not given up on the pro-presidential Our Ukraine-People's Self-Defence Bloc from joining a reconstituted democratic coalition boosted by the centrist Lytvyn bloc. She said she would accept virtually any condition to salvage the democratic coalition.

"We will close our eyes and accept any ultimatums in order to preserve Ukraine's strategic orientation, to preserve parliament and not to plunge the country into a new crisis," she said.

Speaking at a press conference on Friday, Ms Tymoshenko said that both she and the president fully supported the EU plan to resolve the Georgia-Russia conflict. "Let everyone see that Yushchenko's position, my position and that of our political forces fully coincide," she said.

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## Think Tank Issues Damning Report

The Centre for Political and Legal Reform, a well known Kyiv think tank headed by Ihor Koliushko, recently unveiled a damning report at a UNIAN press conference. The report summarises the findings of the relationship between the president and prime minister during the first half of this year.



The report is all the more credible as Mr Koliushko worked in the presidential secretariat on legal issues following the Orange Revolution. But, he left in protest at policies he found to be uncomfortable to endorse after Viktor Baloha took over the presidential secretariat in September 2006.

The report points to the fact that only the Constitutional Court has the legal right to declare anything issued by the president or government as "unconstitutional." Yet, throughout the course of the Yulia Tymoshenko government many of its policies and decisions were declared by the president or secretariat to be unconstitutional, a step that usurps the role of the Constitutional Court.

In line with Ukraine's constitution, the president has the legal right to halt government decisions if he believes them to be unconstitutional by submitting a complaint to the Constitutional Court. This right is not to be a free for all against all government decisions and should be based on a sincere belief that the decision really is unconstitutional.

In accordance with Ukrainian legislation, the president also has a right to halt government decisions on legal grounds because they infringe legislation (as opposed to the constitution). If the president deems a decision to be "illegal" he can refer it to the Administrative Court.

During the period monitored by the Centre for Political and Legal Reform, the president issued 30 decrees to halt 40 government decisions and policies. The centre concluded that the president had systematically abused his power to halt government policies in all of these cases.

In the same period the president issued an additional 40 decrees that gave instructions to the government. The Centre for Political and Legal Reform concluded that issuing instructions "did not adhere to the constitutional prerogatives of the president."



Under the 2006 parliamentary constitution, the government is responsible to parliament and appointed by a coalition. The president acted as though the 1996 constitution, where governments came under the president's control, remained in place. The Centre for Political and Legal Reform pointed out that the president had no constitutional right to give instructions ("doruchennia") to the government or to local bodies.

The report also criticised the president's appointment of regional governors. Under the 2006 constitution, if governors are removed by the president their replacement should be jointly decided with the government. This never happened on a single occasion. Again the president acted as if the 1996 constitution remained in place and governors were appointed and dismissed solely by the president.

Furthermore, the report questions the practice of replacing governors with "acting" governors as a means to bypass consulting the government, and by doing so infringing the constitution. There is no requirement to consult with government on appointing acting governors who may act indefinitely.

The report contends that acting governors were illegally appointed not from within the state administration (i.e. deputy governor) but from outside, usually a person loyal to the president.

The blocking of governors from attending government meetings was also deemed unconstitutional. This policy prevented the government from implementing policies in certain regions of the country.

**"The National Security and Defence Council (NSDC) was also castigated for interfering in areas beyond its constitutional remit."**

The National Security and Defence Council (NSDC) was also castigated for interfering in areas beyond its constitutional remit. Of the 20 resolutions issued during the period under review, 10 (or 50 percent) had no relationship to national security issues and were interference in the government's work.



▲ Raisa Bohatyriova

In December 2007, Raisa Bohatyriova of the Party of Regions was appointed NSDC secretary, four days after Ms Tymoshenko's confirmation as prime minister by parliament. The appointment was considered part of the May 2007 deal struck between the president and the Party of Regions to create a grand coalition in return for them agreeing to pre-term elections.

With the appointment of Ms Bohatyriova a grand coalition would be de facto created outside parliament. Former Kuchma loyalists Stepan Havrysh and Kostiantyn Hryshchenko were brought in to complement Ms Bohatyriova.

The Centre for Political and Legal Reform report concluded with three points:

- The president had over-stepped his right to halt government decisions not on constitutional or legal grounds but because of political and other differences. These presidential practices "could be understood as interference in the competence of the government."
- The president's repeated claim that government decisions were unconstitutional were never explained and this decision was not within the competence of any institution other than the Constitutional Court. The court did not rule any government decisions to have been unconstitutional.



- The president repeatedly resorted to the tactic of withdrawing complaints to the Constitutional Court before it had made a ruling. The same complaint would be then re-submitted in a re-written format. This practice in effect paralysed the Constitutional Court.



The Centre for Political and Legal Reform's report points to the systematic undermining of Ukraine's 2006 constitution, which ironically was negotiated by the president at round-table negotiations at the height of the Orange Revolution. During the 8 December 2004 parliamentary vote, only BYuT voted against the compromise package that included constitutional changes that went into effect two years later.

The president's undermining of Ukraine's rule of law flies in the face of one of the central aims of the Orange Revolution. Ukrainians protested in their millions to change the rule of law in Ukraine towards a democratic, humane and European system after a decade of abuse of their human and legal rights under Leonid Kuchma.

Undermining the rule of law also flies in the face of the president's declared aims for Ukraine's integration into NATO and the EU. Ukraine cannot hope to implement the EU's 1993 Copenhagen Criteria for future membership, if and when it is offered, if those in the highest office are doing their most to undermine a central tenet of a country's integration into Europe; namely, upholding the rule of law, and establishing the highest ethical standards and procedures for the prosecutor's office and judiciary.

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